

James V. Marks (JM 6257)
Roseann Bassler Dal Pra (RBD 4919)
HOLLAND & KNIGHT LLP
195 Broadway
New York, New York 10007
212-513-3200

Attorneys for Defendant
Rockland County Sewer District #1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOROUGH OF UPPER SADDLE RIVER,

Plaintiff,

v.

VILLAGE OF AIRMONT, ROCKLAND,
COUNTY SEWER DISTRICT #1,

Defendants.

07 Civ. 0109 (____) (MDF)

**DEFENDANT ROCKLAND COUNTY SEWER DISTRICT #1'S
NOTICE OF MOTION TO DISMISS ALL CLAIMS ASSERTED
AGAINST IT BY PLAINTIFFS KAREN MILLER, ROY OSTROM,
MARIA FLORIO, MARK RUFFOLO, AND LINDA MCDONALD**

PLEASE TAKE NOTICE that on May 29, 2007, defendant Rockland County Sewer District #1 (the "District") moved this Court before The Honorable Mark D. Fox, United States Magistrate Judge, at the United States Courthouse, Courtroom 421, 300 Quarropas Street, White Plains, NY 10601-4150, for an Order pursuant to Fed. R. Civ. P. 12(b)(1) dismissing all claims asserted against the District by Plaintiffs Karen Miller, Roy Ostrom, Maria Florio, Mark Ruffolo, and Linda McDonald ("Plaintiffs").

The grounds for the motion are that Plaintiffs did not follow the 60-day notice requirement of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A) and, as such, the Court cannot exercise jurisdiction over Plaintiffs claims.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Court's May 22, 2007 expedited briefing schedule, any opposing affidavits and answering memoranda must be served by June 5, 2007, and any reply by the District must be served by June 7, 2007.

Dated: New York, New York
May 29, 2007

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: /s/ James V. Marks
James V. Marks (JM 6257)
Roseann Bassler Dal Pra (RBD 4919)
195 Broadway
New York, New York 10007
Tel.: (212) 513-3200
Fax: (212) 385-9010

Lawrence R. Liebesman (Admitted Pro Hac Vice)
Steve Kelton (Admitted Pro Hac Vice)
HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave. NW
Washington, DC 20006
Tel.: (202) 955-3000
Fax: (202) 955-5564 Fax

Counsel for Defendant
Rockland County Sewer District #1

James V. Marks (JM 6257)
Roseann Bassler Dal Pra (RBD 4919)
HOLLAND & KNIGHT LLP
195 Broadway
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07 Civ. 0109 (____) (MDF)

**REPORT AND
RECOMMENDATION**

This matter having come before the Court on the motion by defendant Rockland County Sewer District #1 (the "District") to dismiss all claims asserted against it by Plaintiffs Karen Miller, Roy Ostrom, Maria Florio, Mark Ruffolo, and Linda McDonald ("Plaintiffs") pursuant to Fed. R. Civ. P. 12(b)(1) (the "Motion"), and Court having considering the papers submitted in support of the Motion, and the Court having considered the papers submitted in opposition to the Motion, and for good cause shown,

IT IS ON THIS ____ day of _____, 2007, that I make the following findings and recommendations:

- (i) the Motion should be granted in its entirety;

- (ii) Plaintiffs' federal Clean Water Act claims against the District should be dismissed with prejudice on the ground that Plaintiffs have failed to give proper notice under the citizen suit provision of that Act; and
- (iii) Plaintiffs' state common law claims of private nuisance and trespass should be dismissed without prejudice on the ground that supplemental jurisdiction does not exist because the Plaintiffs do not have a viable federal claim.

Mark D. Fox, U.S.M.J.

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